

# SENATE BILL 83

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(PRE-FILED)

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By: **Chair, Education, Health, and Environmental Affairs Committee (By Request  
– Departmental – Information Technology)**

Requested: September 25, 2019

Introduced and read first time: January 8, 2020

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Delivery of Notices and Communications by Electronic**  
3 **Means – Authorized**

4 FOR the purpose of authorizing a unit of State government to deliver certain notices and  
5 communications to a certain individual by electronic means under certain  
6 circumstances; providing that delivery of a certain notice or communication in a  
7 certain manner shall be considered equivalent to delivery by first-class mail;  
8 establishing certain requirements, procedures, and conditions for the delivery of a  
9 notice or communication by electronic means; establishing the manner in which an  
10 individual may affirmatively consent to or withdraw consent for the delivery of  
11 certain notices and communications by electronic means; requiring a unit of State  
12 government to provide to an individual a certain statement under certain  
13 circumstances; providing that a withdrawal of consent does not affect the legal  
14 effectiveness, validity, or enforceability of a certain notice or communication;  
15 providing for the application of this Act; defining certain terms; and generally  
16 relating to the delivery of notices and communications by a unit of State government  
17 to an individual.

18 BY adding to

19 Article – General Provisions

20 Section 1–404

21 Annotated Code of Maryland

22 (2019 Replacement Volume)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
24 That the Laws of Maryland read as follows:

25 **Article – General Provisions**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **1-404.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (2) "DELIVERED BY ELECTRONIC MEANS" MEANS THE DELIVERY OF  
5 A NOTICE OR COMMUNICATION BY A UNIT TO AN E-MAIL ADDRESS AT WHICH AN  
6 INDIVIDUAL HAS CONSENTED TO RECEIVE NOTICES OR COMMUNICATIONS FROM  
7 THE UNIT.

8 (3) "UNIT" MEANS AN EXECUTIVE AGENCY, A DEPARTMENT, A BOARD,  
9 A COMMISSION, OR ANY OTHER INSTRUMENTALITY OF THE STATE.

10 (B) THIS SECTION DOES NOT APPLY TO ANY NOTICE OR COMMUNICATION  
11 FROM A UNIT THAT IS REQUIRED TO BE DELIVERED BY CERTIFIED OR REGISTERED  
12 MAIL.

13 (C) SUBJECT TO SUBSECTION (E) OF THIS SECTION, A UNIT MAY DELIVER BY  
14 ELECTRONIC MEANS A NOTICE OR COMMUNICATION TO AN INDIVIDUAL IF THE UNIT  
15 MEETS THE REQUIREMENTS OF TITLE 21, SUBTITLE 1 OF THE COMMERCIAL LAW  
16 ARTICLE IN OBTAINING THE INDIVIDUAL'S CONSENT TO HAVE NOTICES OR  
17 COMMUNICATIONS SENT TO THAT INDIVIDUAL BY ELECTRONIC MEANS.

18 (D) A NOTICE OR COMMUNICATION DELIVERED IN ACCORDANCE WITH  
19 SUBSECTION (C) OF THIS SECTION SHALL BE CONSIDERED EQUIVALENT TO  
20 DELIVERY BY FIRST-CLASS MAIL.

21 (E) (1) A UNIT MAY DELIVER A NOTICE OR COMMUNICATION TO AN  
22 INDIVIDUAL BY ELECTRONIC MEANS UNDER THIS SECTION ONLY IF THE INDIVIDUAL  
23 HAS AFFIRMATIVELY CONSENTED TO DELIVERY BY ELECTRONIC MEANS AND HAS  
24 NOT WITHDRAWN THE CONSENT.

25 (2) IF A PROVISION REQUIRING A UNIT TO DELIVER NOTICE OR  
26 COMMUNICATION TO AN INDIVIDUAL EXPRESSLY REQUIRES THE RECIPIENT TO  
27 VERIFY OR ACKNOWLEDGE RECEIPT OF THE NOTICE OR COMMUNICATION, THE UNIT  
28 MAY DELIVER THE NOTICE OR COMMUNICATION BY ELECTRONIC MEANS ONLY IF  
29 THE METHOD USED PROVIDES A MEANS FOR THE INDIVIDUAL TO ELECTRONICALLY  
30 VERIFY OR ACKNOWLEDGE RECEIPT OF THE NOTICE OR COMMUNICATION.

31 (F) (1) BEFORE AN INDIVIDUAL CONSENTS TO RECEIVE NOTICES OR  
32 COMMUNICATIONS FROM A UNIT BY ELECTRONIC MEANS, THE UNIT SHALL PROVIDE  
33 TO THE INDIVIDUAL A CLEAR AND CONSPICUOUS STATEMENT INFORMING THE  
34 INDIVIDUAL OF:

1           **(I) ANY RIGHT OR OPTION OF THE INDIVIDUAL TO HAVE THE**  
2 **NOTICES OR COMMUNICATIONS PROVIDED OR MADE AVAILABLE BY THE UNIT IN**  
3 **PAPER OR ANOTHER NONELECTRONIC FORM;**

4           **(II) THE INDIVIDUAL'S RIGHT TO WITHDRAW CONSENT TO HAVE**  
5 **NOTICES OR COMMUNICATIONS FROM THE UNIT DELIVERED BY ELECTRONIC**  
6 **MEANS, INCLUDING INFORMATION ON HOW THE INDIVIDUAL MAY WITHDRAW**  
7 **CONSENT;**

8           **(III) ANY CONDITIONS OR CONSEQUENCES IMPOSED ON THE**  
9 **INDIVIDUAL IF THE INDIVIDUAL WITHDRAWS CONSENT;**

10           **(IV) WHETHER THE INDIVIDUAL'S CONSENT APPLIES:**

11                   **1. ONLY TO NOTICES OR COMMUNICATIONS RELATED TO**  
12 **A PARTICULAR TRANSACTION; OR**

13                   **2. TO IDENTIFIED CATEGORIES OF NOTICE OR**  
14 **COMMUNICATIONS FROM THE UNIT THAT MAY BE DELIVERED BY ELECTRONIC**  
15 **MEANS;**

16           **(V) HOW AN INDIVIDUAL WHO CONSENTS TO DELIVERY OF A**  
17 **NOTICE OR COMMUNICATION BY ELECTRONIC MEANS MAY OBTAIN A PAPER COPY OF**  
18 **THE NOTICE OR COMMUNICATION;**

19           **(VI) HOW THE INDIVIDUAL CAN UPDATE THEIR CONTACT**  
20 **INFORMATION; AND**

21           **(VII) THE HARDWARE AND SOFTWARE REQUIREMENTS FOR**  
22 **ACCESS TO AND RETENTION OF A NOTICE OR COMMUNICATION DELIVERED BY**  
23 **ELECTRONIC MEANS.**

24           **(2) WHEN AN INDIVIDUAL GIVES A UNIT CONSENT TO DELIVER**  
25 **NOTICES AND COMMUNICATIONS BY ELECTRONIC MEANS THE INDIVIDUAL SHALL**  
26 **CONFIRM THE CONSENT ELECTRONICALLY, IN A MANNER THAT REASONABLY**  
27 **DEMONSTRATES THAT THE INDIVIDUAL CAN ACCESS THE INFORMATION IN THE**  
28 **ELECTRONIC FORM THAT THE UNIT USES TO GIVE NOTICES OR COMMUNICATIONS.**

29           **(3) IF THE HARDWARE OR SOFTWARE REQUIREMENTS NEEDED TO**  
30 **ACCESS OR RETAIN A NOTICE OR COMMUNICATION DELIVERED BY ELECTRONIC**  
31 **MEANS CHANGE IN A WAY THAT CREATES A MATERIAL RISK THAT AN INDIVIDUAL**  
32 **WILL NOT BE ABLE TO ACCESS OR RETAIN A SUBSEQUENT NOTICE OR**

1 COMMUNICATION TO WHICH THE CONSENT APPLIES, THE UNIT SHALL PROVIDE TO  
2 THE INDIVIDUAL:

3 (I) A STATEMENT SETTING FORTH THE REVISED HARDWARE  
4 AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR  
5 COMMUNICATION DELIVERED BY ELECTRONIC MEANS; AND

6 (II) A COPY OF THE STATEMENT REQUIRED UNDER PARAGRAPH  
7 (1) OF THIS SUBSECTION.

8 (G) (1) A WITHDRAWAL OF CONSENT BY AN INDIVIDUAL UNDER THIS  
9 SECTION:

10 (I) SHALL BE EFFECTIVE WITHIN A REASONABLE PERIOD OF  
11 TIME AFTER THE UNIT RECEIVES THE NOTICE OF THE WITHDRAWAL OF CONSENT  
12 FROM THE INDIVIDUAL; AND

13 (II) DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY,  
14 OR ENFORCEABILITY OF A NOTICE OR COMMUNICATION DELIVERED BY  
15 ELECTRONIC MEANS TO THE INDIVIDUAL BEFORE THE WITHDRAWAL OF CONSENT IS  
16 EFFECTIVE.

17 (2) FAILURE TO COMPLY WITH SUBSECTION (F)(3) OF THIS SECTION  
18 MAY BE TREATED, AT THE ELECTION OF THE INDIVIDUAL, AS A WITHDRAWAL OF  
19 CONSENT FOR PURPOSES OF THIS SECTION.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2020.